

PLANNING AND BUILDING (JERSEY) LAW 2002

Appeal under Article 109(1)(i) against a land condition notice served under Article 86(1) of Chapter 6 of Part 6

REPORT TO THE MINISTER FOR THE ENVIRONMENT

made under Article 115(5)
by D A Hainsworth LL.B(Hons) FRSA Solicitor
the inspector nominated under Article 113(2) from the list of persons appointed
under Article 107

Appellant:

Marcus Sutton

Land condition notice reference number and date of issue:

ENF/2024/00013 dated 15 May 2024

The land to which the notice relates:

Field L720, La Rue de la Ville Emphrie, St. Lawrence, shown edged red on the plan attached the notice.

Reason for issuing the notice

The notice has been issued because it appears to the Chief Officer that the amenities of this part of Jersey are being adversely affected by the condition or use of the land.

The work specified in the notice required to be undertaken to abate the alleged injury to amenities:

1. Remove from the Land any commercial vehicle belonging to and bearing the advertisement 'Sutton Transport Services LTD'.
2. Remove from the Land all wood, metal and plastic debris.
3. Remove from the Land the blue and red lorry cabin situated in the western corner of the site.
4. Remove from the Land the yellow cement mixer.
5. Remove from the Land any concrete blocks including the two concrete fence posts and circular concrete structure.
6. Remove from this Land any piles of rubble and mounds of gravel.
7. Demolish and remove from the Land the grey shipping container situated on top of trailer PRO712 as well as the concrete blocks that it is sitting on top of.
8. Remove from the Land the orange crane situated behind vehicle PRO712.
9. Remove from the Land road traffic cones and the red and white plastic road dividers, metalling Heras fencing and associated detritus.
10. Remove from the Land the vehicle bearing the registration number J6692.
11. Remove from the Land the metal and wood situated on top of trailer JS7-5.
12. Remove from the Land wooden pallet boards, the ladder and red piping from trailer J6640.
13. Remove from the Land the red piping from on top of vehicle ST14.

14. All items removed from the Land must be disposed of appropriately.”

Time for compliance with the notice:

Six calendar months.

Grounds of appeal:

The appeal has been brought on the following grounds set out in Article 109(2), namely: -

(b) that permission has already been granted under this Law in respect of the matters alleged in the notice

(f) that the requirements of the notice exceed what is reasonably necessary to make good any injury to amenity

Inspector's site visit date:

6 September 2024

Hearing date:

6 September 2024

Introduction and procedural matters

1. The notice has been served under Article 86(1), which states: -

“86 Notice requiring proper maintenance of land, etc.

(1) If it appears to the Chief Officer that the amenities of a part of Jersey are being adversely affected by the condition or use of any land, the Chief Officer may serve a notice requiring work specified in the notice be undertaken to abate the injury.”

2. There are references in the appeal representations submitted by the appellant and the Infrastructure and Environment Department to Article 88 notices, which relate to dumps, and Article 89 notices, which require action to be taken in respect of disused vehicles. However, the notice that has been appealed was served under Article 86(1) only and matters relating to Articles 88 and 89 notices are not for consideration in the appeal.

3. There is no definition of “amenities” in the Law, but the term is usually treated as a broad concept. The alleged adverse effect on amenities should pertain to an identifiable area of the Island. Existing permitted uses of land in that area are already a feature of the area’s amenities.

4. The scope of the work that can be required by the notice is wide, but it must concern the proper maintenance of the land and abate an injury to amenities that is caused by the condition or use of the land. The work should be specified clearly, precisely and unambiguously and be capable of enforcement.

5. On receipt of my report, the Minister can vary the terms of the notice using the power in Article 116(2)(d) if this can be done without causing injustice, which usually means that the terms should not be made more onerous.
6. As this is a land condition notice, not a planning enforcement notice, it does not allege that there has been a breach of planning controls. There is no planning application associated with the appeal. Ground (b) is solely concerned with whether or not permission has already been granted under the Law in respect of the land's alleged condition and use. This is a matter of law and fact.
7. The requirements of the notice will be excessive on ground (f) if they would prevent something taking place for which permission has already been granted under the Law or if they do not concern proper maintenance of the land or seek to abate an alleged injury that is not the result of the land's condition or use.
8. The following matters are not relevant to the determination of this appeal: -
(i) the planning merits of the permitted use, including the planning policy considerations now applying to new development proposals in this area, (ii) whether other regulations relating to the permitted use have been complied with and (iii) the availability of alternative sites for the use.

Ground (b) (that permission has already been granted under this Law)

9. The Royal Court judgment in *Steven Hotton v The Island Development Committee* dated 24 February 1998 records that the land had been used by haulage contractors since the end of the Occupation. This predates the introduction of development controls and there is no recorded planning permission relating to the use. The evidence available to me indicates that the use has been continuous with various degrees of intensity since the end of the Occupation and that it is likely to be immune from development controls enforcement action. Immunity does not grant planning permission under the Law and the appellant does not claim on ground (b) that planning permission has been granted for the use.
10. The Royal Court judgment relates to a land condition notice concerning the land that was served on 2 February 1993 under the provisions of Article 13 of the *Island Planning (Jersey) Law 1964*. The notice required the removal from the land of all vehicles, vehicle parts, machinery, equipment, rubble and associated debris belonging to *Stephen Hotton Limited*.
11. The Royal Court's decision in relation to the land was as follows:

"Within six months ... the company will remove all matter described in the notice Thereafter, the [land] shall be used solely for the storage of empty skips and the long wheeled based trailers. No full skips shall remain on site longer than a period of twenty-four hours. This is to cover the event that the refuse depot is closed when the full skip is collected. For the avoidance of doubt there shall be no more sorting of mixed loads in this area. ... No other use will be countenanced".
12. The use countenanced by the Court is a commercial storage use of the land by a haulage contractor solely for empty skips and long wheeled based trailers, with a 24-hour exemption for full skips. The Court's decision did not regulate

the number of skips and trailers that could be stored, or the way in which they should be stored, or their position within the land. It is inherent in the decision that there would be movements of commercial traffic to and from the land and activities on the land itself, some of which would be noisy, and that there would be additional activities taking place that would be incidental or ancillary to the use countenanced by the Court.

13. The appellant relies for the purpose of ground (b) on the Royal Court's decision as a grant of permission under the Law in respect of some of the matters alleged in the notice now served under Article 86(1). The Department have not challenged this reliance in their appeal representations. As to the other matters alleged in the notice, the appellant agrees to remove them or has already done so. He points out that the land is not being used for skips at present and that none of the requirements of the notice relate to skips.
14. The provisions of Article 13 of the 1964 Law relating to land condition notices correspond with the provisions relating to land condition notices that are now contained in Article 86(1) of the 2002 Law. Article 129 of the 2002 Law states that anything done under the 1964 Law that could have been done under the 2002 Law continues to have effect as if done under the 2002 Law. I conclude that the appellant is entitled to rely on the Royal Court's decision as a grant of permission under the 2002 Law and that the appeal should succeed on ground (b) to the extent described in paragraph 12 above.

Ground (f) (that the requirements are excessive)

15. I have set out below my conclusions on ground (f) in relation to each of the fourteen requirements of the notice. I have reached these conclusions after taking into account paragraphs 1 to 14 above, the representations I received from the appellant and the Department, what I saw on my inspection of the land and its surroundings, what I heard at the hearing, and the public representations received during the consultation period, which include detailed observations and are signed by twenty-one residents in the area.

- 1. Remove from the Land any commercial vehicle belonging to and bearing the advertisement 'Sutton Transport Services LTD'*

Trailers are vehicles. Commercial vehicles in addition to trailers will be on the land from time to time in connection with the permitted storage use. This requirement should be varied so that it is confined to commercial vehicles being stored on the land, other than long wheeled based trailers.

- 2. Remove from the Land all wood, metal and plastic debris.*

This requirement should remain, although the waste items had been removed by the time of my inspection.

- 3. Remove from the Land the blue and red lorry cabin situated in the western corner of the site.*

This item has been misdescribed. It had been removed by the time of my visit, but it was in fact a box trailer, which the appellant maintains was permitted. The requirement should be deleted.

4. Remove from the Land the yellow cement mixer

There has not been a yellow cement mixer on the land. This requirement should be deleted.

5. Remove from the Land any concrete blocks including the two concrete fence posts and circular concrete structure.

This requirement should be deleted. It is not clear which concrete blocks it refers to. The only concrete blocks I saw on my inspection are used when trailers are being tested for roadworthiness; these are incidental to the permitted storage use. The concrete fence posts and circular concrete structure are works of construction and not land maintenance matters.

6. Remove from this Land any piles of rubble and mounds of gravel.

These are not part of the permitted use and should be removed because of their effect on visual amenities.

7. Demolish and remove from the Land the grey shipping container situated on top of trailer PRO712 as well as the concrete blocks that it is sitting on top of.

The shipping container has been removed, but the requirement to remove it should remain, since the permitted use allows the land to be used for the storage of long wheeled based trailers but does not permit the storage of unrelated items on top of the trailers. The demolition of the shipping container exceeds what is necessary; removal is sufficient. The requirement to remove the concrete blocks is excessive for the reasons stated in connection with Requirement 5 above.

8. Remove from the Land the orange crane situated behind vehicle PRO712.

The crane has been removed and is now in Poland. It was a trailer-mounted crane that the appellant states was permitted. This requirement should be deleted.

9. Remove from the Land road traffic cones and the red and white plastic road dividers, metalling Heras fencing and associated detritus.

These are all required for safety reasons when trailers are being deployed elsewhere. They are therefore incidental to the permitted use. This requirement should be deleted.

10. Remove from the Land the vehicle bearing the registration number J6692.

This vehicle is a mobile crane that is not kept on the land. It is used on the land when it is needed for loading and unloading purposes. Loading and unloading as such does not form part of the permitted storage use and would not usually be incidental or ancillary to it. The requirement should remain.

11. Remove from the Land the metal and wood situated on top of trailer JS7-5.

See Requirement 7. The storage of unrelated items on top of the trailers is not permitted. This requirement should remain.

12. Remove from the Land wooden pallet boards, the ladder and red piping from trailer J6640.

See Requirement 7. The storage of unrelated items on top of the trailers is not permitted. This requirement should remain.

13. Remove from the Land the red piping from on top of vehicle ST14.

See Requirement 7. The storage of unrelated items on top of the trailers is not permitted. This requirement should remain.

14. All items removed from the Land must be disposed of appropriately.

The appellant accepts that this must be done. The requirement should remain.

16. I have therefore concluded that the notice should be upheld with the variations stated above and that the appeal should succeed on ground (f) to this extent.

Recommendations

17. I recommend that paragraph 4 of the land condition notice ENF/2024/00013 issued on 15 May 2024 is varied as follows: -

(a) by replacing requirement 1 by "Remove from the Land any commercial vehicle stored on the land and belonging to and bearing the advertisement 'Sutton Transport Services Ltd', other than long wheeled based trailers".

(b) by deleting requirements 3, 4, 5, 8 and 9.

(c) by replacing requirement 7 by "Remove from the Land the grey shipping container situated on top of trailer PRO712".

18. Subject to these variations I recommend that the notice is upheld and the appeal is dismissed.

Dated 13 November 2024

D.A.Hainsworth

Inspector